IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

Crl.Rev.Pet.No. 2446 of 2007()

CRA.286/2000 of ADDL. SESSIONS COURT, (ADHOC), PALAKKAD
CC.123/2000 of JUDL.MAGISTRATE OF FIRST CLASS COURT-III, PALAKKAD

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REVN. PETITIONER: PETITIONER/APPELLANT/2ND ACCUSED:

MOHANAN, S/O. RAMAN,
AGED 38, KADUKKAMKUNNU, AKATHETHARA, PALAKKAD.

BY ADV. SRI.S.SHYAM

RESPONDENTS: RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE DIRECTOR OF PUBLIC PROSECUTIONS
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 02/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl.R.P. No. 2446 OF 2007

Dated this the 2nd day of July, 2007

O R D E R

The petitioner, who was the 2nd accused in C.C.No.123/2000 on the file of the JFCM-III, Palakkad, challenges the conviction entered and the sentence passed concurrently against him by the courts below for an offence punishable under section 379 IPC.

2. According to the prosecution, PW3, the defacto complainant, while on his way to Namakkal in a bus was robbed off the gold ornaments carried in his pocket and it was the 1st accused who committed the offence at about 11.30 p.m. on 17.1.2000.

3. Eventhough the courts below did not accept the prosecution case that it was first accused who had picked the pocket of PW3, both the courts have concurrently convicted the revision petitioner who was the 2nd accused since the five of the stolen ornaments were recovered from the possession of the revision petitioner within five hours of the theft. Both the courts below have relied on the testimony of PW3 who identified the ornaments as his own and the evidence of the recovery witness. Even if the recovery of the ornaments falling under section 27 of the Evidence Act may not constitute substantive evidence, it was corroborated by the testimony of PW3 who identified the same from the witness box. It cannot be said that the conviction recorded against the

revision petitioner is illegal.

4. What now survives for consideration is the question of legality and the extent of the sentence imposed on the revision petitioner.

5. Having regard to the fact that the case of the prosecution that it was the 1st accused who had picked the pocket of PW3 while he was travelling in the bus has not been accepted by the courts below and having further regard to the fact that no previous conviction or involvement in any offence by the revision petitioner was proved, penal servitude by way of incarceration for a period of three years was not warranted. For the conviction recorded against the revision petitioner, I am of the view that imprisonment for a period of two years and an appropriate fine would suffice. Accordingly, while confirming the conviction recorded against the revision petitioner, the sentence imposed on him is modified. For the said conviction the revision petitioner need only undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/-(Rupees five thousand only) and on default to pay the fine he shall suffer simple imprisonment for three months.

This revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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